

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

Case #04-30170-MAP

WESTFIELD EAST MAIN)
STREET LLC, Plaintiff)

v.)

C. DAVID TRADER,)
JEAN M. TRADER,)
JOSEPH B. MITCHELL,)
TERESA K. MITCHELL,)
DONALD GOVE,)
MARK D. SIEBERT,)
BRIAN BURKE,)
MICHAEL BRETON,)
BRADFORD MOIR,)
MARY MOIR,)
INTERSTATE BUILDING)
SUPPLY, INC., and)
LUMBER CENTER, INC.,)
Defendants)

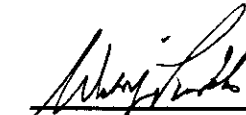
DEFENDANTS' MOTION
FOR RECONSIDERATION OF
MOTIONS TO DISMISS AND
REQUEST FOR NEW DATE FOR
COUNSEL TO BE HEARD

Now come the defendants, through Counsel, and request that this Honorable Court reconsider the action taken to deny the motions on or about January 28, 2005.

As grounds for this motion, the Defendants state that although the Court acted to deny the Defendants' original motions, such action was due to the fact that Defendants' Counsel was not present at the hearing before the Court due to lack of notice of the same (see Affidavit of William J. Pudlo attached hereto). Further, this Court's Order, in denying the Defendants' Motions, was entered without prejudice to the Defendants seeking reconsideration and an opportunity to be heard.

WHEREFORE, the Defendants request that this Honorable Court set a date for hearing to reconsider the Defendants' motions to dismiss heretofore filed with the Court.

The Defendants,
by their Attorney,

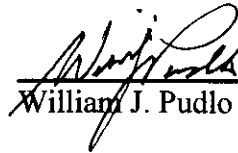


William J. Pudlo
P.O. Box 676
West Springfield, Mass. 01090
Telephone: (413) 739-4000

Certificate of Service

I, William J. Pudlo, hereby certify that I have served a copy of the above pleading by mailing a copy of the same, postage prepaid, to Pamela A. Zorn, 101 Federal Street, Boston, Massachusetts 02110.

Dated: April 21, 2005



William J. Pudlo

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

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**WESTFIELD EAST MAIN)
STREET LLC, Plaintiff)**

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SUPPLY, INC., and)
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Defendants)**

**AFFIDAVIT OF WILLIAM J. PUDLO
IN SUPPORT OF DEFENDANTS'
MOTION FOR RECONSIDERATION
OF MOTIONS TO DISMISS AND
REQUEST FOR NEW DATE FOR
COUNSEL TO BE HEARD**

I, William J. Pudlo, do depose and say that:

1. I am a duly licensed Attorney in the Commonwealth of Massachusetts with privileges to practice before this Honorable Court, with a mailing address of P.O. Box 676, West Springfield, Massachusetts 01090.
2. I have been Counsel of record for the Defendants in this action since its inception.
3. On September 22, 2004, I caused to be filed three (3) Motions to Dismiss in the above captioned action in behalf of the Defendants herein.
4. On or about October 7, 2005 I received Opposition to each motion filed by the Plaintiff through its Counsel.
5. The Court issued a notice of hearing for the three motions for December 17, 2004 at 2:00 p.m., however I did not receive the notice from the Court.
6. At some time after the notice was issued, I was contacted by opposing Counsel who advised me of the hearing date.

7. Upon investigation with the Court, I determined that the notice was sent to an old address that I had used in Springfield, Massachusetts in 1992.
8. Between 1992 and the present date I have changed addresses only twice, once in 1992 and again in 1995 when I settled in my present offices at 7 Park Drive, West Springfield, Massachusetts using a business address of P.O. Box 676, West Springfield, Massachusetts 01090 since July 1, 1995.
9. The original notice was returned to the Court as “undeliverable – no forwarding address”, despite the fact that the address on all of my pleadings and on the pleadings in another case all bore my current address in West Springfield, Massachusetts.
10. On or about December 16, 2004, I became ill with an influenza virus and was unable to attend the hearing on December 17, 2005.
11. I filed an Emergency Motion to Continue which was granted by the Court, subject to rescheduling of the hearing at some time in January of 2005.
12. Between December 16, 2004 and a date at some point in January of 2005, the Court issued a notice of hearing for the motions on January 28, 2005 at 3:00 p.m. in Springfield.
13. I never received the second notice and was unaware of the scheduled hearing.
14. On January 28, 2005 I was out of my office in the afternoon attending to matters with clients.
15. I returned to my office on January 28, 2005 at approximately 5:30 p.m. and heard a telephone message that I was to be in Court at 3:00 p.m. that afternoon.
16. I was quite concerned since I had never received the notice from the Court.
17. I immediately called the Court and left a message with the office of Elizabeth French, the Clerk to the Court that I had no knowledge of the hearing and that I never received any notice similarly to the events of the prior notice in this matter.
18. On January 31, 2005, the Court entered an Order denying the motions, however, without prejudice on the part of the Defendants to move for reconsideration.

The foregoing statements are true to the best of my information and belief and made under the pains and penalties of perjury.

Dated: April 21, 2005



William J. Pudlo

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